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### ADMINISTRATIVE LAW

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# Title 1

## ADMINISTRATIVE LAW

### Part I. Office of the State Register

#### Chapter 1. Preliminary Provisions

##### §101. Title of Official Legal Codification

A. The official legal codification published pursuant to R.S. 49:954.1 shall be known as the *Louisiana Administrative Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:954.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register, LR 10:905 (November 1984).

##### §103. Citation of the *Louisiana Administrative Code*

A. Without prejudice to any other mode of citation, the *Louisiana Administrative Code* may be cited by Title, Part and Section number. The preferred short form of citation of the *Louisiana Administrative Code* is "LAC." Thus, "LAC 35:XI.315" refers to Section 315 of Part XI of Title 35 of the *Louisiana Administrative Code*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:954.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register, LR 10:905 (November 1984), amended LR 11:856 (September 1985).

##### §105. Arrangement of the *Louisiana Administrative Code*

A. The *Louisiana Administrative Code* is arranged as follows.

1. The *Louisiana Administrative Code* is divided into titles which are subdivided as follows:

a. Parts, identified by Roman numerals, with a new sequence of numerals beginning in each Title;

b. Subparts, identified by Arabic numerals, with a new sequence of numerals beginning in each Part;

c. Chapters, identified by Arabic numerals, with a new sequence of numerals beginning in each Part;

d. Subchapters, identified by capital letters, with a new sequence of the alphabet beginning in each Chapter;

e. Sections, identified by Arabic numerals, with a new sequence of numerals beginning in each Title.

2. The Sections of the *Louisiana Administrative Code* are subdivided into the following parts:

a. Subsections, identified by capital letters, with a new sequence of the alphabet beginning in each Section;

b. Paragraphs, identified by Arabic numerals, with a new sequence of numerals beginning in each Subsection;

c. Subparagraphs, identified by lowercase letters, with a new sequence of the alphabet beginning in each Paragraph;

d. Clauses, identified by lowercase Roman numerals, with a new sequence of numerals beginning in each Subparagraph.

3. It should be noted that not every Title will be subdivided into Parts, but every Title will have at least one Chapter; not every Chapter will have a Subchapter, but every Chapter will have at least one Section.

4. Sections which are subdivided may have no more than four levels of subdivisions. Sections which consist of definitions in alphabetical order do not need subdivision labels for each definition. Each definition shall begin at the first indent level and is also unlabeled. Other lists within Sections, if in alphabetical order, do not need labels. A single paragraph within a Section is not labeled.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:954.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register, LR 10:905 (November 1984), amended LR 11:856 (September 1985).

##### §107. Headings Not to be Used in Construing

A. Titles, Parts, Chapters, Subchapters and Sections will have a heading. This heading will not govern, limit, modify, or in any manner affect the scope, meaning, or intent of the provisions of the *Louisiana Administrative Code*. These headings are merely an explanation of what is in that unit of the *Louisiana Administrative Code* and should be stated in as few words as possible.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:954.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register, LR 10:905 (November 1984).

##### §109. Tenses, Gender, and Number

A. Except as otherwise stated in any Title, Part, Chapter, Subchapter, or Section of the *Louisiana Administrative Code*, the present tense includes the past tense and future tense, and the future, the present tense; the masculine gender includes the feminine and neuter, the feminine includes the masculine and neuter, and the neuter includes the masculine and feminine; and the singular includes the plural, and the plural, the singular.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:954.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register, LR 10:905 (November 1984).

## Chapter 3. Publication of the *Louisiana Administrative Code* and the *Louisiana Register*

### Subchapter A. *Louisiana Administrative Code*

#### §301. Contents of the *Louisiana Administrative Code*

A. The *Louisiana Administrative Code* shall contain all effective rules adopted by each agency subject to the Louisiana Administrative Procedure Act and all boards, commissions, agencies, and departments of the executive branch. The *Louisiana Administrative Code* will also contain effective Executive Orders. Any rules which would be unduly cumbersome, expensive, or otherwise inexpedient to publish may be excepted and a notice stating the general subject matter and how a copy may be obtained substituted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:954.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register, LR 10:905 (November 1984).

#### §303. Periodic Supplementation of the *Louisiana Administrative Code*; Index

A. At least once each year all rules and Executive Orders required to be codified in the *Louisiana Administrative Code* by §301 of this Title which have been filed with the Office of the State Register will be published and distributed as an integral part of this Code, or the affected Title or Part thereof may be reissued. The index and any tables shall be similarly supplemented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:954.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register, LR 10:905 (November 1984).

### Subchapter B. *Louisiana Register*

#### §305. Citation of the *Louisiana Register*

A. Without prejudice to any other mode of citation, the *Louisiana Register* may be cited by volume and page number. The approved short form of citation to the *Louisiana Register* is "LR." Thus, "LR 3:801" refers to material beginning on page 801 of Volume 3 of the *Louisiana Register*.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:954.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register, LR 10:905 (November 1984).

#### §307. Contents of the *Louisiana Register*

A. Each issue of the *Louisiana Register* will contain a table of contents arranged alphabetically by agency within the following categories: Committee Reports, Emergency Rules, Executive Orders, Notices of Intent, Potpourri, and Rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:954.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register, LR 10:905 (November 1984).

#### §309. Federal Rules, Standards or Guidelines

A. If an agency proposes or adopts federal rules or portions thereof, the requirement that the full text thereof be filed with the Office of the State Register and published in the *Louisiana Register* shall be satisfied by including in the text of the proposed or adopted rules a statement that the agency proposes to adopt or is adopting such federal rules with a specific citation to the *Federal Register* or *Code of Federal Regulations* where the text appears.

B. If an agency proposes or adopts as rules the standards or guidelines, or portions thereof, of any professional, trade or other association or entity, the requirement that the full text be filed with the Office of the State Register and published in the *Louisiana Register* shall be satisfied by including in the text of the proposed or adopted rules a specific citation to the standards or guidelines and filing with the Office of the State Register a copy of such standards or guidelines.

C. In accordance with the Louisiana Administrative Procedure Act, the agency shall be required to file the full text of adopted rules, including federal rules, standards and guidelines in the agency's principal office.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:954.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register, LR 10:905 (November 1984).

#### §311. Frequency of Publication of the *Louisiana Register*

A. The *Louisiana Register* shall be published at least once a month and shall contain all previously unpublished items required to be published and which are duly filed by the department prior to the closing date of each issue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:954.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register, LR 10:905 (November 1984).

#### §313. Table of Sections Affected

A. Each issue of the *Louisiana Register* will contain a numerical list of the Sections of the *Louisiana Administrative Code* expressly affected by the documents published in the issue. Beginning with the second issue of each quarter, each issue will also carry a cumulative list of the Sections of the *Louisiana Administrative Code* affected by the documents published during that quarter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:954.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register, LR 10:905 (November 1984).

## Subchapter C. Copies and Reproductions

### §315. Copyright

A. All information published in the *Louisiana Administrative Code* or the *Louisiana Register* which includes, but is not limited to, cross references, tables of cases, notes of decisions, tables of contents, indices, source notes, authority notes, numerical lists, and codification guides, other than the actual text of rules or regulations may be reproduced only with the written consent of the Office of the State Register. Any such information which appears on the same leaf with the text of any rule or regulation, however, may be incidentally reproduced in the connection with the reproduction of such rule or regulation, if such reproduction is for the private use and not for resale. There shall be no other restrictions on the reproduction of information published pursuant to this Part, and the state hereby consents to any such reproduction.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:954.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register, LR 10:905 (November 1984).

### §317. Photocopies and Fees

A. The Office of the State Register or an agency shall provide a copy of any rule to the public upon request in writing or in person. The public will be charged statutory or other reasonable fees for photocopies of rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:954.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register, LR 10:905 (November 1984).

## Chapter 5. Effect of Publication

### §501. Official Text of Published Documents

#### A. Asterisks

1. Where more than one section of rules is being amended in a single document, and the Sections are not consecutive, then the omitted Sections are indicated by a row of three asterisks.

2. Where multiple Sections are being amended and the Sections are not consecutive but there are no omitted Sections of the text, do not insert asterisks. Example: §§103

and 105 both being amended in a single amendment package would not have asterisks between them if no §104 exists.

3. Amending Entire Section. Asterisks may not be used in place of any material not needing revision when an entire Chapter or other body of the rule subdivision is being amended. All language intended to be part of the new Chapter must be included.

4. Amending Parts of a Section. When a designated subdivision of a Section is being amended, a row of three asterisks is inserted to indicate any omitted subdivisions of the Section, both before and after the amended portion. Any introductory language to a designated subdivision must be included in the text.

B. The text of any document, required or authorized to be published under this Title, shall from the date of such publication be the only valid and enforceable text of such document regardless of any discrepancy between such official text and the agency text of such document. Thereafter any amendment to such document shall be drawn as an amendment to the official text thereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:954.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register, LR 10:905 (November 1984), amended LR 20:657 (June 1994).

### §503. Constructive Notice

A. Unless otherwise specifically provided by statute the publication under this Title of any document required or authorized by this Title to be so published shall, except in cases where notice by publication is insufficient in law, be sufficient to give notice of the contents of such document to any person subject thereto or affected thereby.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:954.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register, LR 10:905 (November 1984).

### §505. Judicial Notice

A. The contents of the *Louisiana Administrative Code*, the supplements thereto, and the *Louisiana Register* shall be given judicial notice.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:954.1.

HISTORICAL NOTE: Promulgated by the Office of the Governor, Division of Administration, Office of the State Register, LR 10:905 (November 1984).



# Title 1

## ADMINISTRATIVE LAW

### Part III. Division of Administrative Law

#### Chapter 1. General Rules

##### §101. Purpose

A. Adjudications conducted by the Division of Administrative Law shall be governed by the Administrative Procedure Act (APA), R.S. 49:950 et seq., and the Division of Administrative Law Act (DALA), R. S. 49:991 et seq. To the extent that these rules are not in conflict with other statutory authority, they establish additional procedures for regulating adjudications conducted by the division. These rules are not intended to be a comprehensive guide for division hearings but are intended only as a supplement to the APA and the DALA. Adjudications conducted pursuant to federal law or R.S. 49:999.1, may be governed by other rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by Department of Civil Service, Division of Administrative Law, LR 28:40 (January 2002).

##### §103. Definitions

A. The following terms used in this Chapter shall have the meanings listed below, unless the context otherwise requires, or unless specifically redefined in a particular Section.

*Administrative Hearings Clerk* The person who, directly or through his/her designee, maintains custody of and receives filings to the adjudicatory record for the division.

*Division* The Division of Administrative Law.

*Pleading* A petition, motion, response, request or any statement of position filed in connection with an adjudication or appeal.

*Referring Agency* The state agency for which an adjudicatory hearing is being held.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:40 (January 2002).

##### §105. Conflicts

A. Except as otherwise required by law, this Chapter shall govern procedures used in division adjudications.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:40 (January 2002).

##### §107. Severability

A. If any provision of these rules, or the application thereof, is held to be invalid, the remaining provisions shall not be affected, so long as they can be given effect without the invalid provision. To this end, the provisions of these rules are declared to be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:40 (January 2002).

##### §109. Computation of Time

A. In computing any period of time prescribed or allowed in these rules, except where otherwise required by law, the day on which the designated period begins shall not be included. The last day of the designated period shall be included unless it is a Saturday, Sunday, or a legal holiday as provided in R.S. 1:55, in which event the designated period shall run until the end of the next day which is not a Saturday, Sunday, or a legal holiday.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002).

#### Chapter 3. Filing and Notices

##### §301. Administrative Hearings Clerk

A. The administrative hearings clerk shall be the official custodian of adjudicatory records for the division. The clerk shall certify copies of official documents in his/her custody; distribute decisions, recommendations, orders, subpoenas, and notices issued by the administrative law judges; and perform other duties as assigned by the director.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002).

##### §303. Docket Number

A. At the time a request for docketing or hearing is received by the division, the matter shall be assigned a docket number. The docket number shall be used on all subsequent pleadings, amendments or supplements filed in the case.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002).

### §305. Official Recordings; Copies of Official Recordings; Transcripts

A. The division shall make an official recording of the hearing.

B. Copies of tapes shall be available for purchase from the administrative hearings clerk.

C. A verbatim transcript shall be made when requested by a party or required by law. Requests for a transcript shall be in writing and submitted to the administrative hearings clerk. The administrative hearings clerk will furnish an estimate of the transcription costs. The estimated costs must be paid before the recording will be transcribed. Actual costs must be paid in full before delivery of the transcript.

D. When a transcript of any part of the proceeding has been made, the original shall be filed into the adjudicatory record.

E. Copies of public records held by the division may be purchased pursuant to Division of Administration regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002).

### §307. Filing of Pleadings and Documents

A. Any pleading, document or other item which is being filed into the adjudicatory record shall be filed by hand delivery, mail, or if less than 25 pages, by facsimile transmission with the administrative hearings clerk.

B. Unless otherwise provided by law, all pleadings, documents or other items shall be deemed filed on the date received by the administrative hearings clerk. Receipt of a filing by facsimile transmission on or before the due date shall be considered as timely filed, provided the original document is filed into the adjudicatory record within five working days of receipt of the facsimile.

C. Parties requesting discovery shall serve such requests on any other party, his/her counsel of record, or other designated representative, but discovery requests shall not be filed in the record of the proceedings. The party responsible for service of the discovery materials shall retain the original and become the custodian of such materials. The provisions of this Section shall not be construed to preclude the filing of any discovery materials as exhibits or as evidence in connection with a motion or hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002).

### §309. Notices

A. This Section shall apply to notices of hearings, orders, decisions and other pertinent documents sent by the division.

B. Notices shall be sent by regular mail unless otherwise required by law. Notices may be sent to the counsel of record only. Otherwise, notices are sent to the party's last known address as filed in the adjudicatory record. Parties shall promptly send address changes to the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002).

### §311. Pleadings Form and Content

A. Unless otherwise required by law, pleadings should:

1. state the name, mailing address and telephone number of the person filing the pleading, and his/her attorney bar roll number, if applicable;

2. be legibly written in ink, typewritten or printed with 1-inch top, bottom and side margins and should be on strong durable white paper, no larger than 8 1/2 by 11 inches;

3. be divided into separately numbered paragraphs and double-spaced;

4. state clearly, concisely and particularly all relevant facts that support the relief sought;

5. state the relief sought;

6. when appropriate, identify any statute, regulation, rule, written statement of law or policy, decision, order, permit, or license and the particular aspect of each upon which the pleading relies;

7. be signed in ink by the party filing same or by his or her duly authorized agent or attorney. The signature of the person signing the document constitutes a certification that he or she has read the document and that, to the best of his or her knowledge, information and belief, every statement contained in the document is true; and

8. certify that service has been made in accordance with these rules.

B. The heading should be similar in format to and shall include the information contained in the following example:

STATE OF LOUISIANA  
DIVISION OF ADMINISTRATIVE LAW

DEPARTMENT OF \_\_\_\_\_ \*

\*

\*

IN THE MATTER OF \_\_\_\_\_ \* DOCKET NO. :

\*

\*

\_\_\_\_\_  
(TITLE OF PLEADING)

C. The certificate of service should be similar in format to and shall include the information contained in the following example:

I certify that a copy of this document has been sent to all parties of record by (mail, fax, hand delivery) on this \_\_\_ day of \_\_\_, 200\_\_.

D. Failure to comply with this Section shall not invalidate the pleadings, but the administrative law judge shall have discretion to rule whether pleadings are in substantial compliance with this Section, to require the amendment or supplementation of any pleading, or to take such other action as may be appropriate.



**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:991 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:41 (January 2002).

### **§313. Service of Pleadings**

A. Except where otherwise required by law, on or before the day that a pleading is filed with the administrative hearings clerk, service of same shall be made by the party who prepared the pleading, upon all other parties, attorneys or designated representatives by hand delivery, mail or facsimile transmission to the recipient at the number designated for facsimile transmission.

B. Unless otherwise provided herein, service by mail or by facsimile transmission is effective on the date mailed or transmitted. Personal or domiciliary service is effective when delivered or tendered, even if delivery is refused.

C. When a party is represented by an attorney or other designated representative or has appointed an agent for service of process, notice may be given to the party through the attorney, other designated representative or agent.

D. Service on a party or person shall be given at the last known address filed into the adjudicatory record. Any party or person shall timely file into the adjudicatory record notice of any change of address.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:991 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002).

## **Chapter 5. Adjudications**

### **§501. Administrative Law Judge: Regulating Adjudications**

A. The administrative law judge shall have the authority to regulate the course of the proceedings and maintain order in accordance with R.S. 49:994.D.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:991 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002).

### **§503. Commencement of Adjudications**

A. A case is commenced for purposes of this Chapter upon the filing of a docketing or hearing request with the administrative hearings clerk by a party or a referring agency accompanied by a notice of violation or request for a hearing.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:991 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002).

### **§505. Location of Hearings**

A. Hearings will be held in the venue required by statute.

B. Department of Public Safety, Office of Motor Vehicle hearings held pursuant to R.S. 32:661 et seq., will be scheduled in one of the following regions: where the arrest was made, where the attorney is located, or where the police officer is assigned if the officer is subpoenaed.

C. Unless a statute requires otherwise, the location of hearings will be determined by the division.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:991 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002).

### **§507. Telephone Hearings**

A. The administrative law judge may designate that all or any portion of a proceeding be conducted by telephone, unless prohibited by law.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:991 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002).

### **§509. Representation**

A. Parties shall have the right to retain counsel but shall not be required to do so. Counsel seeking to withdraw from the representation of a party shall file a motion to withdraw. Leave to withdraw shall not be withheld unreasonably.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:991 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002).

### **§511. Consolidation**

A. When two or more adjudications involving common issues of law or fact are separately pending before the division, the administrative law judge, upon his or her own motion or that of any party, at any time prior to the adjudicatory hearing, may order the consolidation of the matters or may order a joint hearing on any of the common issues. If the matters are pending before two or more administrative law judges, the approval of each administrative law judge is required. The matter with the higher docket number shall be transferred to the administrative law judge to whom the matter with the lower docket number was assigned.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:991 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:42 (January 2002).

### **§513. Separation of Actions**

A. Upon motion of the administrative law judge or of any party, the administrative law judge may separate actions, which were cumulated or consolidated if separation would simplify the proceedings, permit a more orderly disposition of the matter, or otherwise be in the interest of justice.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:991 et seq.

**HISTORICAL NOTE:** Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:43 (January 2002).

### **§515. Continuances**

A. Except where otherwise prohibited by law, a continuance may be granted in any case for good cause shown. Motions for continuance should be in writing.

**AUTHORITY NOTE:** Promulgated in accordance with R.S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:43 (January 2002).

## **§517. Motions**

A. Any party may file motions relating to an adjudication.

B. Except as otherwise permitted by the administrative law judge, all motions, other than those made during a hearing or conference, shall be submitted in writing and served on all parties as provided in §313 of these Rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:43 (January 2002).

## **§519. Subpoenas**

A. The division shall order the issuance of a subpoena upon written request of a party and compliance with the requirements of this rule.

B. Unless otherwise provided, to request the issuance of a subpoena, the following procedure shall be followed.

1. The subpoena shall be prepared and served by the requestor who shall file the return of service into the adjudicatory record. In Department of Public Safety/Office of Motor Vehicles cases a law enforcement officer subpoena shall be prepared by the administrative hearings clerk and delivered to the appropriate law enforcement agency to be served upon the law enforcement officer witness.

2. A request on behalf of any party shall be accompanied by a check or money order to cover witness fees pursuant to R.S. 49:956(5), R.S. 13:3662.A (law enforcement officers), LAC 55.III.201, or other applicable law. Witness fees for experts shall be set by the administrative law judge in accordance with R.S. 49:950 et seq. The check or money order shall be made payable to each witness subpoenaed, or as provided for law enforcement witnesses.

3. Additional witness fees must be submitted in order for a subpoena to be reissued due to a continuance or other reason.

4. The subpoena should include the following:

- a. the heading contained in §311.B of these rules;
- b. the name of the party and the representative or attorney requesting the subpoena;
- c. the docket number of the case;
- d. the complete name, service address (with directions if necessary), and telephone number of the person being subpoenaed;
- e. a sufficient description of any document or item to be produced; and
- f. the date, time, place and proceeding for which the subpoena is requested.

C. A subpoena adapted from the Louisiana Code of Civil Procedure formulary is acceptable. Sample subpoena forms are available from the administrative hearings clerk.

D. Failure of a witness to appear or respond to a subpoena will not be grounds for a continuance or dismissal unless Paragraph B.1 above has been complied with, and the request for the subpoena was received by the division at least 10 days before the date required for appearance, production or inspection. However, the administrative law judge may grant a continuance when the interest of justice requires it.

E. Only the administrative law judge may dismiss a witness who appears at a hearing pursuant to a subpoena issued by the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:43 (January 2002).

## **§521. Discovery**

A. Any party to a proceeding may conduct discovery in all manners as provided by law in civil actions as provided by R.S. 49:956.

B. In the interest of administrative economy, the parties should first attempt to obtain discovery by agreement or through the Public Records Act, R.S. 44:1 et seq.

C. The administrative law judge, for good cause, may issue any order to protect a party or person from annoyance, embarrassment, oppression, disclosure of confidential information, undue burden or expense.

D. The following Section applies only in cases adjudicated pursuant to the Louisiana Implied Consent Law, R.S. 32:661 et seq.

1. Requests for discovery should be made at the same time as the request for hearing.

2. Failure to request discovery at the time the hearing request is filed may result in a continuance if a response is not timely received, but not necessarily a dismissal of the case.

AUTHORITY NOTE: Promulgated in accordance with R. S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:43 (January 2002).

## **§523. Exhibits**

A. Maps, drawings and other exhibits should not exceed 8 1/2 by 14 inches unless they are folded or reduced to the required size.

B. During the hearing, copies of exhibits should be furnished to the administrative law judge and all parties, unless the administrative law judge rules otherwise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:44 (January 2002).

## §525. Confidentiality

A. Except as otherwise provided by law, all portions of adjudicatory records are subject to review by all parties and the general public.

B. A motion for protective order, or other request to limit discovery, may be considered as a request for confidentiality. In the event a protective order is issued or discovery is otherwise limited, the administrative law judge may designate in writing as confidential that portion of the adjudicatory record necessary to enforce the provisions of the protective order.

C. Any portion of the adjudicatory record deemed to be confidential by statutory authority should be brought to the attention of the division in order to help ensure the confidentiality of that portion of the record.

AUTHORITY NOTE: Promulgated in accordance with R. S. 49:950 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:44 (January 2002).

## §527. Prehearing Order

A. The administrative law judge may require, prior to the adjudicatory hearing, that the parties submit a joint proposed prehearing order approved and signed by all parties or their counsel of record. Except as otherwise ordered by the administrative law judge, the proposed prehearing order should set forth the following:

1. a brief but comprehensive statement of the factual and legal contentions of each party;
2. a list of the legal authority (including statutes, code articles, regulations and cases) to be relied upon by each party at the adjudicatory hearing;
3. a detailed itemization of all pertinent uncontested facts established by pleadings, stipulations and admissions;
4. a detailed itemization of all contested issues of fact;
5. a list of all contested issues of law;
6. a list and brief description of all exhibits to be offered in evidence by each party. Exhibits to be used solely for impeachment or rebuttal need not be included on the list;
7. a list naming the fact witnesses and the expert witnesses each party may call and a short statement as to the nature of their testimony. Witnesses to be called solely for impeachment or rebuttal need not be included on the list;
8. a list of all matters to be officially noticed;
9. a statement by each party as to the estimated length of time necessary to present its case;
10. all other stipulations;
11. a list of all pending motions;
12. a statement as to any other matters that may be relevant to a prompt disposition of the case;
13. the following certification: "We hereby certify that we have conferred for the purpose of preparing this joint proposed prehearing order and that we have no objections to the contents of this prehearing order other than those attached hereto"; and this order:

"IT IS ORDERED that this matter be set for hearing at \_\_\_\_\_ o'clock, \_\_M. on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ and to continue thereafter until completed."

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B. In the event that any party disagrees with the proposed prehearing order, or any part thereof, he shall attach to the order a signed statement of his opposition and reasons therefor but shall, nevertheless, sign the joint proposed prehearing order which shall be deemed to be approved in all respects except those covered in the statement of opposition.

C. The person who has certified the prehearing order should attend the prehearing conference and the adjudicatory hearing. Any counsel or other representative attending the prehearing conference shall be knowledgeable of aspects of the case and possess the necessary authority to commit his client, associate counsel and witnesses to changes, stipulations and hearing dates.

D. At the conclusion of the prehearing conference, the administrative law judge shall sign the order setting the case for the adjudicatory hearing. Thereafter no amendments to the prehearing order shall be made except at the discretion of the administrative law judge based upon consent of the parties or for good cause shown. If a party fails to cooperate in preparing or filing a prehearing order, the administrative law judge may proceed with the prehearing conference, sign the prehearing order as drafted, continue the prehearing conference, continue the hearing, or order such other action as necessary to facilitate the hearing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by Department of Civil Service, Division of Administrative Law, LR 28:44 (January 2002).

## §529. Rehearing, Reopening, Reconsideration

A. Unless otherwise provided by law, a decision on the merits shall become final as to any party 30 days after mailing of the notice unless a petition for reconsideration, reopening or rehearing is filed with the division within 10 days from date of mailing pursuant to R.S. 49:959.

B. Any requests for reconsideration, reopening or rehearing shall be granted or denied by the administrative law judge who originally decided the case or any judge to whom the matter is subsequently assigned.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:44 (January 2002).

## §531. Termination of Adjudications; Voluntary Withdrawal; Involuntary Waiver; Failure to Appear; Abandonment

A. The administrative law judge may issue an order terminating an adjudication based upon voluntary waiver, withdrawal of the request for a hearing, rescission by the agency of the underlying action, settlement, stipulation, consent order, or any other procedure allowed by law.

## Chapter 7. Mediation

### §701. Mediation

B. In accordance with R.S. 49:955.A, a party who requests an administrative hearing may be deemed to have waived its right to a hearing if after having been provided with reasonable notice the party fails to appear on the day and time set for hearing. In such instances, the rule to show cause, hearing request, or the party's appeal may be dismissed based on the party's waiver of the right to a hearing. The order of dismissal shall be mailed to the party's last known address.

#### C. Abandonment

1. Except as otherwise provided by law, an action is abandoned when the parties fail to take any step in its prosecution or defense for a period of three years.

2. This provision shall be operative without formal order. However, on ex parte motion of any party, other interested person or the administrative hearings clerk, supported by affidavit, the administrative law judge shall enter an order of dismissal as of the date of its abandonment.

3. The affidavit shall specify that no step has been taken for a period of three years in the prosecution or defense of the action.

4. The order shall be mailed to all parties, and the parties shall have 30 days from date of mailing to move to set aside dismissal based on a showing of good cause.

5. Any formal discovery as authorized by these rules and the Administrative Procedure Act and served on all parties, whether or not filed of record, including the taking of a deposition with or without formal notice, shall be deemed to be a step in the prosecution or defense of an action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:44 (January 2002).

A. Any party may request a pre-trial mediation conference.

B. Mediation shall not be conducted over the objection of a party.

C. The administrative law judge to whom the case was originally assigned shall not conduct the mediation. The order setting the matter for mediation shall designate another administrative law judge to act as mediator.

D. Each party, representative or attorney shall negotiate in good faith, and be prepared to obtain the authority necessary to settle and compromise the litigation. The mediator may permit telephone appearances in lieu of a personal appearance for good cause and convenience of the parties.

E. Mediation shall not unduly delay the hearing schedule. The presiding administrative law judge may continue scheduled dates on motion of a party or on his/her own motion.

F. Confidentiality of mediations shall be governed by R.S. 9:4112.

G. Each party or representative should submit information sufficient to explain the gist of the case to the assigned mediator at least one day prior to the conference. The submittals need not be in any certain form and may consist of any documents, exhibits or writings the party wishes the mediator to consider before the conference. The mediator may use all statements, documents, exhibits or other types of information submitted, as he/she deems appropriate to foster settlement unless a party has expressly stated otherwise.

H. The mediator shall not draft settlement agreements. Agreements may be recited on the record before the presiding administrative law judge and later reduced to writing by the parties or their representatives.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:991 et seq.

HISTORICAL NOTE: Promulgated by the Department of Civil Service, Division of Administrative Law, LR 28:45 (January 2002).

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